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Status of fees paid for processing of applications for approval of plans of work for exploration and related matters

Report of the Secretary-General

1. In 2011 four applications for approval of plans of work for exploration were considered by the International Seabed Authority. These applications were made by Nauru Ocean Resources Inc. (NORI), Tonga Offshore Minerals Ltd. (TOML), China Ocean Research and Development Association (COMRA) and the Russian Federation. Following consideration by the Legal and Technical Commission and the Council, each of the applications was approved. Subsequently, as required by the relevant regulations of the Authority, the plans of work were prepared in the form of contracts.

2. In accordance with the relevant regulations, each of the applicants paid a fee for the processing of the application for approval of the plan of work. In the case of NORI and TOML, a fixed fee of US$ 250,000 was paid pursuant to regulation 19 of the Regulations on Prospecting and Exploration for Polymetallic Nodules in the Area. In the case of the Russian Federation, a fixed fee of $500,000 was paid pursuant to regulation 21 (1) (a) of the Regulations on Prospecting and Exploration for Polymetallic Sulphides in the Area. Pursuant to regulation 21 (1) (b) of the Sulphides Regulations, COMRA elected to pay a fixed fee of $50,000, followed by an annual fee calculated on the basis set out in regulation 21 (2).[1]

3. Regulation 19 (3) of the Nodules Regulations, which has a parallel in regulation 21 (5) of the Sulphides Regulations, provides that if the administrative costs incurred by the Authority in processing an application are less than the fixed amount, the Authority shall refund the difference to the applicant. Accordingly, the Secretary-General conducted an analysis of the costs incurred in processing each of the applications submitted in 2011. The analysis shows that, overall, the four

[1] Regulation 21 (2) provides for a variable fee depending upon the number of blocks retained for exploration. Advance relinquishment would diminish the number of blocks, and thus the fee payable. Assuming, however, that a contractor makes no advance relinquishment, the total amount paid over the life of a 15-year contract would be $800,000.

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applicants for approval of plans of work in 2011 paid a total of $1.05 million in application fees, while the total expenditure attributable to processing of these applications is provisionally estimated at $1,477,882. The breakdown of expenditure is as shown in table 1 below. It should be noted that, because of the need to account separately to each contractor for the use of fees paid, the actual shortfall to the Authority is estimated at $546,561.

Table 1
Breakdown of expenditure against fees paid by contractors in 2011
(United States dollars)

Contractor	*Fee paid*	*Processing costs*	*Excess (shortfall)*	*Refund due*
NORI	250 000	447 690	(197 690)	—
TOML	250 000	425 710	(175 710)	—
COMRA	50 000	223 161	(173 161)	—
Russian Federation[a]	500 000	381 321	118 679	118 679
Total	**1 050 000**	**1 477 882**	**(546 561)**	

[a] The amounts for the Russian Federation are provisional figures, as the contract had not been concluded at the time the present report was prepared.

4. Until such time as they have been fully accounted for, the fees paid by applicants for approval of plans of work are held in a separate account with the Authority's bankers. With regard to the fees paid in respect of the applications considered in 2011, the amount of $1.05 million, less the eventual amount of any refund due to the Russian Federation, may be regarded as miscellaneous income under the Financial Regulations of the Authority. The treatment of this amount, as regards the budget of the Authority, will be considered by the Finance Committee and does not require separate action by the Council until such time as a recommendation is made by the Finance Committee.

I. Fees under the Nodules Regulations

5. The Nodules Regulations (regulation 19) provide that the fixed fee shall be $250,000. It should be noted that this figure derives from the modifications to part XI of the United Nations Convention on the Law of the Sea and to annex III thereto resulting from the 1994 Agreement relating to the implementation of part XI of the Convention (annex, sect. 8, para. 3) which, in order to ensure parity with the registered pioneer investors under resolution II, provides that with regard to the implementation of annex III, article 13, paragraph 2, of the Convention, the fee for processing applications for approval of a plan of work limited to one phase (either exploration or exploitation) shall be $250,000. Essentially therefore the fee has remained unchanged since resolution II was adopted by the third United Nations Conference on the Law of the Sea in 1982.

6. Article 13, paragraph 2, of annex III to the Convention goes on to provide, however, that the amount of the fee shall be reviewed from time to time by the Council in order to ensure that it covers the administrative costs incurred by the Authority in processing the application. This provision is repeated in the Regulations

(regulation 19 (3)). The Regulations also provide that if the administrative costs are less than the fixed amount, the Authority shall refund the difference to the applicant.

7. Fees of $250,000 each were paid by NORI and TOML. Because these applications were considered over several years, the attributable expenditures amounted to $447,690 and $425,710, respectively. No refund is due and the contractors have been duly informed. There is nothing in the Regulations that would provide a basis for a supplementary fee to be levied on the contractors, but there is a general power for the Council to review the amount of the fee from time to time to ensure that it covers the administrative costs incurred by the Authority. Since the available evidence suggests that the current fee is not sufficient to cover the Authority's costs, it is suggested that the Council may wish to consider this matter in the context of the review of the Nodules Regulations that is already on the agenda of the Council for 2012.

II. Fees under the Sulphides Regulations

8. The Sulphides Regulations (regulation 21) provide for a fixed fee of $500,000 or a variable annual fee payable over 15 years, with an initial fixed fee of $50,000. In the event that the Secretary-General notifies the Council that the fee has been insufficient to cover the administrative costs incurred by the Authority, the Council shall review the amount of the fee. However, this stipulation applies only to the fixed fee of $500,000, as specified in regulation 21 (1) (a), not to the variable fee, as stipulated in regulations 21 (1) (b) and 22. As in the case of the Nodules Regulations, if the administrative costs are less than the fixed amount of fees, the Authority shall refund the difference to the applicant.

9. In 2011 the Russian Federation paid $500,000 and COMRA paid $50,000. Expenditure was $381,321 and $223,161, respectively. The amount in respect of the Russian Federation remains a provisional estimate, as the contract had not been concluded at the time the present report was prepared. In principle, however, once the contract has been signed, the Secretary-General will inform the contractor of any balance to be refunded.

10. While the fixed fee of $500,000 appears to be sufficient to meet the costs of processing applications for approval of plans of work for sulphides, it is apparent that there is a difficulty with respect to the application of the variable fee. The initial fixed fee of $50,000 under this formula is clearly not adequate to meet the administrative costs of processing an application. Furthermore, the Regulations, perhaps inadvertently, do not appear to provide for a mechanism to review this amount. It is suggested that the Council may wish to review this matter with a view to ensuring that the initial fee under the variable fee option is set at a level which is sufficient to meet the administrative costs of processing the application for approval of a plan of work, while at the same time remaining an attractive option for potential applicants.

III. Ongoing costs of contract administration

11. Neither the Nodules Regulations nor the Sulphides Regulations provide adequately for the ongoing costs of contract administration and management. There

are currently 10 active exploration contracts. A substantial amount of the workload of the secretariat and the Legal and Technical Commission is directly attributable to the contracts. This includes reviewing the annual reports of contractors, translating them where necessary, preparing summaries for the Legal and Technical Commission, and providing meeting services for the Commission. The secretariat also analyses raw data submitted by the contractors, in particular environmental data, and reports thereon to the Commission. The review of annual reports of contractors has in fact become the most time-consuming part of the Commission's agenda because of the constraints upon individual members of the Commission in reviewing confidential data only in Kingston. In addition, the secretariat is required under the Regulations to develop internal systems to ensure confidentiality of data submitted by contractors. The Authority, represented by the Secretary-General and the secretariat, also has a general responsibility, as regulator, to monitor the implementation of contracts for exploration and to hold such regular meetings and consultations with contractors as may be necessary for this purpose, for example, in connection with the periodic review of the implementation of plans of work as provided for in the Regulations. The Convention also envisages, in due course, the appointment of a staff of inspectors to observe and monitor, for example, the environmental implications of contractors' activities at sea.

12. All these activities have an impact upon the budget of the Authority. For the time being, the budget is funded entirely by assessed contributions of member States as a transitional measure "until the Authority shall have sufficient income from other sources to meet its administrative expenses".[2] In fact, apart from the fees payable under the Nodules and Sulphides Regulations, the Authority has no other sources of income at present. It may be noted in this context that as a result of the 1994 Agreement, the requirement for contractors to pay an annual fixed fee of $1 million pursuant to annex III, article 13, paragraph 3, of the Convention "shall not apply". There is thus no current mechanism for the Authority to recover the increasing costs of contract administration and management, including the development of essential environmental rules, regulations and procedures, without increasing the assessed contributions of all members of the Authority.

13. For these reasons, the Council may wish to consider whether it is appropriate to begin to develop a system of cost recovery, on a "user pays" basis, to support the work of the Authority which is directly attributable to the management and administration of contracts for exploration and, in due course, exploitation. If such a system were to be developed, it would have to be one that is equitable for all contractors, does not impose a disproportionate burden on contractors and that is implemented with full regard to the terms of the existing contracts for exploration.

IV. Conclusions and recommendations

14. The following conclusions may be drawn. The Council is invited to consider the matters set out below and to make recommendations accordingly:

(a) The fixed fee of $250,000 specified in the Nodules Regulations is insufficient to cover the administrative costs incurred by the Authority in processing

[2] United Nations Convention on the Law of the Sea, United Nations, *Treaty Series*, vol. 1833, No. 31363, art. 160, para. 2 (e).

applications. It is recommended that the Council review the amount to make it consistent, at the least, with the amount of $500,000 specified in the Sulphides Regulations;

(b) The fixed fee of $500,000 specified in the Sulphides Regulations is sufficient for the time being to cover the administrative costs incurred by the Authority in processing applications. However, where applicants elect to pay the fixed fee of $50,000 followed by an annual fee calculated as stipulated in regulation 21 (2), the fixed amount of $50,000 is inadequate to cover the Authority's costs and the Council is invited to review this matter with a view to ensuring that the initial fee under the variable fee option is set at a level which is sufficient to meet the administrative costs of processing the application for approval of a plan of work, while at the same time remaining an attractive option for potential applicants;

(c) In neither case is the fixed fee for processing of applications sufficient to meet the ongoing costs to the Authority of administering contracts for exploration. These costs may be estimated at approximately 15 per cent to 20 per cent of the administrative budget of the Authority. The Council is invited to consider whether it considers it appropriate to develop a system of cost recovery, on a "user pays" basis, to support the work of the Authority which is directly attributable to the management and administration of contracts for exploration and, in due course, exploitation.